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Paper No.

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APR 12 2002

OFFICE OF PETITIONS

In re Application of
Frank W. Ahern
Application No. 09/819,053
Filed: May 20, 2000
Attorney Docket No. 101950.00027

ON PETITION

In re Application of
Frank W. Ahern
Application No. 09/933,347
Filed: May 20, 2000
Attorney Docket No. 101950.00027

This is a decision on the petition filed by facsimile transmission on March 22, 2002, in Application No. 09/933,347, requesting that Application No. 09/819,053 be voided, as it is a duplicate of Application No. 09/933,347.

A review of the record of Application No. 09/819,053 discloses that a petition was filed on February 20, 2001, requesting, in effect, that lost application papers requesting a continued prosecution application under 37 CFR 1.53(d) be converted to a filing under 37 CFR 1.53(b) and accorded a filing date of May 20, 2000. The petition was granted in a decision mailed June 7, 2001.

A review of the record of Application No. 09/933,347 indicates the original request for a continued prosecution application (CPA) under 37 CFR 1.53(d) filed on May 20, 2000 apparently resurfaced sometime after the creation of Application No. 09/819,053. However the CPA request under 37 CFR 1.53(d) was processed under the provisions of 37 CFR 1.53(b) and assigned Application No. 09/933,347, with a filing date of May 20, 2000.

Clearly an application filed under 37 CFR 1.53(d) cannot be treated as an application under 37 CFR 1.53(b), except by way of a granted petition. Since Application No. 09/933,347 resulted without proper authority, the file of Application No. 09/933,347 will be merged into the file of Application No. 09/819,053. The full filing fees paid on December 17, 2001 in Application No. 09/933,347 will be refunded to counsel's deposit account.

In view of the above, the petition is DISMISSED. The correct application number for the application filed May 20, 2000 by Frank W. Ahern under Attorney Docket No. 101950.00027 has been confirmed as 09/819,053.

The applications are being returned to Initial Patent Examination Division for merging the file of Application No. 09/933,347 into the file of Application No. 09/819,053.

Thereafter, Application No. 09/819,053 will be further processed as a continuation application under 37 CFR 1.53(b), with a filing date of **May 20, 2000**.

Application No. 09/933,347 will no longer be an active serial number. All further correspondence concerning this application must be directed to Application No. 09/819,053.

Sherry D. Brinkley
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